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SIPDIS

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STATE FOR EB/IFD/OIA (HATCHER AND KAMBARA) AND NEA/MAG (HARRIS)  
STATE PASS USTR (BURKHEAD) AND USAID (MCCLLOUD)  
USDOC FOR ITA/MAC/ONE (NATHAN MASON), ADVOCACY CTR (REITZE), AND  
CLDP (TEJTEL AND MCMANUS)  
USDOC PASS USPTO (ADAMS, BROWN AND MARSHALL  
CASABLANCA FOR FCS (ORTIZ)  
EGYPT FOR FCS (MOEZIE) AND FINANCIAL ATTACHE (SEVERENS)  
LONDON AND PARIS FOR NEA WATCHER

E.O. 12958: N/A

TAGS: [EINV](#) [EFIN](#) [ETRD](#) [ELAB](#) [KTDB](#) [OPIC](#) [USTR](#) [TS](#)  
SUBJECT: TUNISIA: 2008 INVESTMENT CLIMATE STATEMENT

REF: 07 STATE 158802

[1](#)1. Tunisia's 2008 Investment Climate Statement. Topics covered include:

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Openness to Foreign Investment  
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[1](#)2. The Tunisian government actively encourages foreign direct investment (FDI) and has made attracting FDI a top priority. The government encourages export-oriented FDI and screens potential FDI to minimize the impact of the investment on domestic competitors and employment.

[1](#)3. Foreign investment in Tunisia is regulated by the Investment Code Law No. 93-120, dating from December 1993. It covers investment in all major sectors of economic activity except mining, energy, the financial sector and domestic trade.

[1](#)4. The Tunisian Investment Code divides potential investments into

two categories: (1) Offshore, in which foreign capital accounts for at least 66 percent of equity and at least 80 percent of production is destined for the export market, and (2) On-shore, in which foreign equity is limited to 49 percent in most non-industrial projects. (On-shore industrial investment can have up to 100 percent foreign equity).

¶5. The legislation contains two major hurdles for potential FDI: (1) Foreign investors are denied national treatment in the agriculture sector. Foreign ownership of agricultural land is prohibited, although land can be secured through long-term (up to 40 years) lease. However, the government actively promotes foreign investment in agricultural export projects. (2) For onshore companies outside the tourism sector, government authorization is required if the foreign capital share exceeds 49 percent and can be difficult to acquire.

¶6. Investment in manufacturing industries, agriculture, agribusiness, public works, and certain services requires only a simple declaration of intent to invest. Other sectors can require a series of Government of Tunisia authorizations.

¶7. The Government of Tunisia allows foreign participation in its privatization program and a significant share of Tunisia's FDI in recent years has come from the privatization of state-owned or state-controlled enterprises. Privatizations have occurred in telecommunications, banking, manufacturing, and petroleum distribution, among others. In 2006, TECOM Investments and Dubai Investment Group (DIG) purchased a 35 percent stake, valued at US \$2.25 billion, in state-owned Tunisie Telecom. Major FDI has also entered the financial sector via the partial privatization of the UIB (Union Internationale de Banques) in 2002 and the privatization of Banque du Sud, since renamed Attijari Bank, in late 2005.

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¶8. There is no evidence of consistent discrimination against foreign investors either at the time of initial investment or at a later stage. Tunisia's investment promotion authorities have established a system of regulations that has received favorable feedback from the US companies it has assisted. A US investor in electricity production successfully lobbied for a change in Government of Tunisia legislation which permitted the investment to proceed. Another US investor received Government of Tunisia support in a dispute over the application of Investment Code incentives. A major "greenfield" investment in manufacturing has been completed and is operational. The US investor has warmly praised the Foreign Investment Promotion Authority (FIPA) for its continuing support from the outset of the project.

¶9. Nevertheless, there are difficulties, particularly when US companies have attempted to launch projects in sectors in which the Government of Tunisia does not actively promote. Until recently the Government discouraged foreign investment in service sectors such as restaurants, real estate, and retail distribution, but there are signs of relaxation of this policy. In particular, FDI in retail distribution is expanding rapidly. French multinational retail chain Carrefour opened its first store in 2001, followed by the entry of French retail company Gant in 2005. There has also been significant Persian Gulf investment in the real estate sector. Currently, Tunisian law does not authorize franchising as the rule but it tolerates, on a case by case basis, labor intensive franchising projects that could create new jobs. The Government of Tunisia has announced it is drafting an amendment to its law on distribution, which could ease restrictions on franchise operations.

¶10. FDI in certain state monopoly activities (electricity, water, postal services) can be carried out following establishment of a concession agreement. There are also certain restrictions on trade activities. With few exceptions, domestic trading can only be carried out by a company set up under Tunisian law, in which the majority of the share capital is held by Tunisians and management is Tunisian. An additional barrier to non-EU investment results from Tunisia's Association Agreement with the European Union. The EU is providing significant funding to Tunisia for major investment

projects, but clauses in the agreement prohibit non-EU member countries from participation in many EU-funded projects.

¶11. In June, the Ministry of Development and International Cooperation and the Foreign Investment Promotion Agency (FIPA) Tunisia holds an annual investment promotion event, the Carthage Investment Forum, to introduce the Tunisian investment environment and its business opportunities to global investors.

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Conversion and Transfer Policies  
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¶12. The Tunisian dinar is not a fully convertible currency, and it is illegal to take dinars in or out of the country. Although it is convertible for current account transactions (i.e. most bona fide trade and investment operations), Central Bank authorization is needed for some foreign exchange operations. The Government of Tunisia predicts full convertibility of the dinar is not likely before 2009.

¶13. Nonresidents are exempt from most exchange regulations. Under foreign currency regulations, nonresident companies are defined as having: (1) Nonresident individuals who own at least 66 percent of the capital, and (2) Capital financed by imported foreign currency.

¶14. Foreign investors may transfer returns on direct or portfolio investments at any time and without prior authorization. This applies to both principal and capital in the form of dividends or interest. US companies have generally praised the speed of

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transfers from Tunisia, but lamented that long delays may occur in some operations.

¶15. There is no limit to the amount of foreign currency that visitors can bring into Tunisia and exchange for Tunisian dinars. Amounts exceeding the equivalent of 25,000 Tunisian dinars (approximately US \$19,200) must be declared at the port of entry. Non-residents must also report foreign currency imports if they wish to re-export or deposit more than 5,000 Tunisian dinars (roughly US \$4,000). Tunisian customs authorities may require production of currency exchange receipts on exit.

¶16. The dinar is traded on an intra-bank market. Trading operates around a managed float established by the Central Bank (based upon a basket of the Euro, the US dollar and the Japanese yen). The dollar/dinar value fluctuates on a daily basis, with the dollar trading most recently (January 2008) at approximately 1.2 TND. In 2007, the TND appreciated roughly 5 percent against the US dollar and depreciated 3.8 percent against the Euro.

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Expropriation and Compensation  
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¶17. The Tunisian government has the right to expropriate property by eminent domain; there is no evidence of consistent discrimination against US and foreign companies or individuals. There are no outstanding expropriation cases involving US interests and such cases are rare. No policy changes on expropriation are anticipated in the coming year.

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Dispute Settlement  
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¶18. There is no pattern of significant investment disputes or discrimination involving US or other foreign investors. However, to avoid misunderstandings, contracts for trade and investment projects should always contain a clause detailing how eventual disputes should be handled and the applicable jurisdiction. Tunisia is a member of the International Center for the Settlement of Investment Disputes and is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

¶19. The Tunisian legal system is based upon the French Napoleonic code. There are adequate means to enforce property and contractual rights. Although the Tunisian constitution guarantees the independence of the judiciary, the judiciary is not fully independent of the executive branch. Local legal experts assert that courts are susceptible to political pressure.

¶20. The Tunisian Code of Civil and Commercial Procedures does allow for the enforcement of foreign court decisions under certain circumstances. Commercial disputes involving US firms are relatively rare. In cases where disputes have occurred, US firms have generally been successful in seeking redress through the Tunisian judicial system.

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Performance Requirements and Incentives  
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¶21. Performance requirements are generally limited to investment in the petroleum sector or in the newer area of private sector infrastructure development. These requirements tend to be specific to the concession or operating agreement (e.g., drilling a certain number of wells or producing a certain amount of electricity). More broadly, the preferential status (offshore, free trade zone) conferred upon some investments is linked to both percentage of foreign corporate ownership and limits on production for the domestic market.

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¶22. The Tunisian Investment Code and subsequent amendments provide a broad range of incentives for foreign investors, which include tax relief on reinvested revenues and profits, limitations on the value-added tax on many imported capital goods, and optional depreciation schedules for production equipment.

¶23. In order to encourage employment of new university graduates, the government will bear the full cost of the employee's salary for the first two years of employment, and then a portion of the salary for the next five years. The government will also pay initial training costs for new graduates.

¶24. Large investments with high job creation potential may benefit, under certain conditions determined by the Higher Commission on Investment, from the use of state-owned land for a symbolic Tunisian dinar (less than one US dollar). Investors who purchase companies in financial difficulty may also benefit from certain clauses of the Investment Code; these advantages are determined on a case-by-case basis.

¶25. Additional incentives are available to promote investment in designated regional investment zones in economically depressed areas of the country, and throughout the country in the following sectors: health, education, training, transportation, environmental protection, waste treatment, and research and development in technological fields.

¶26. Further benefits are available for investments of a specific nature. For example, companies producing at least 80 percent for the export market receive tax exemptions on profits and reinvested revenues, duty-free import of capital goods with no local equivalents, and full tax and duty exemption on raw materials and semi-finished goods and services necessary for the business.

¶27. Foreign companies resident in Tunisia face a number of restrictions related to the employment and compensation of expatriate employees. Tunisian law limits the number of expatriate employees allowed per company to four. There are lengthy renewal procedures for annual work and residence permits. Although rarely enforced, legislation limits expatriate work permit validity to a total of two years. Central Bank regulations impose administrative burdens on companies seeking to pay for temporary expatriate technical assistance from local revenue. For example, a foreign resident company that has brought in an accountant would have to document that the service was necessary, fairly valued, and

unavailable in Tunisia before it could receive authorization to transfer payment from its operations in Tunisia. This regulation prevents a foreign resident company from paying for services performed abroad.

¶28. Foreign investments and above a certain ceiling require special authorization. The annual ceiling for foreign investments (without special authorization) is currently one million TND (about US \$780,500) or three million TND (about US \$2.34 million) for exporting companies. According to the recently announced measures, companies registered domestically will no longer need permission to increase their capital and non-residents will be allowed to freely manage their corporate accounts.

¶29. For US passport holders, a visa is not necessary for stays of up to four months; however, a residence permit is required for longer stays.

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Right to Private Ownership and Establishment  
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¶30. Tunisian government actions clearly demonstrate a strong preference for offshore, export-oriented FDI. Investors in that category are generally free to establish and own business enterprises and engage in most forms of remunerative activity. Investment which competes with Tunisian firms or on the Tunisian

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market or which is seen as leading to a net outflow of foreign exchange may be discouraged or blocked.

¶31. Acquisition and disposal of business enterprises can be complicated under Tunisian law and depend on the nature of the contract specific to the proposed transaction.

¶32. Disposal of a business investment leading to reductions in the labor force may be challenged or subjected to substantial employee compensation requirements. Acquisition of an on-shore company may require special authority from the Government if it is an industry subject to limits on foreign equity shareholding (such as in the services sector).

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Protection of Property Rights  
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¶33. Secured interests in property are both recognized and enforced in Tunisia. Mortgages and liens are in common use. Tunisia is a member of the World Intellectual Property Organization (WIPO) and has signed the United Nations (UNCTAD) Agreement on the Protection of Patents and Trademarks. The agency responsible for patents and trademarks is the National Institute for Standardization and Industrial Property (INNORPI - Institut National de la Normalisation et de la Propriete Industrielle). Foreign patents and trademarks should be registered with INNORPI.

¶34. Tunisia's patent and trademark laws are designed to protect only owners duly registered in Tunisia. In the area of patents, US businesses are guaranteed treatment equal to that afforded to Tunisian nationals. Tunisia updated its legislation to meet the requirements of the WTO agreement on Trade-Related aspects of Intellectual Property (TRIPS). Copyright protection is the responsibility of the Tunisian Copyright Protection Organization (OTPD - Organisme Tunisien de Protection des Droits d'Auteur), which also represents foreign copyright organizations. New legislation now permits customs officials to inspect and seize goods if copyright violation is suspected.

¶35. Tunisian Copyright Law (No. 36/1994) has been updated to cover new technologies, but its application and enforcement have not always been consistent with foreign commercial expectations. Print audio and video media are considered particularly susceptible to copyright infringement, and there is evidence of significant retail sale of illegal products in these media. Illegal copying of software/CDs/DVDs is widespread.

¶36. Although the concept and application of intellectual property protection is still in the early stages, the Government is making an effort to build awareness and has increased its enforcement efforts in this area. These efforts have led a major supermarket chain to halt the sale of pirated audio and video goods. A US government-backed initiative, operated by the Department of Commerce in conjunction with United States Patent and Trademark Office (USPTO) provides training for Tunisian officials in the field of IPR regulation enforcement. The Government of Tunisia has announced that new IPR legislation is being drafted which will improve enforcement capabilities and strengthen punishment for offenders.

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Transparency of Regulatory System  
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¶37. The Tunisian government has adopted policies designed to promote foreign investment and to prepare Tunisian industry for free competition with foreign markets. Although the 1994 amendment to the Investment Code substantially improved, standardized, and codified incentives for foreign investors, some aspects of existing tax and labor laws remain impediments to efficient business operations.

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¶38. Bureaucratic procedures, while slowly improving in some areas, are cumbersome and time-consuming. Foreign employee work permits, commercial operating license renewals, infrastructure-related services, and customs clearance for imported goods are usually cited as the lengthiest and most opaque procedures in the local business environment. Investors have commented on inconsistencies in the application of regulations. These cumbersome procedures are not limited to foreign investment and also affect the domestic business sector.

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Efficient Capital Markets and Portfolio Investment  
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¶39. The mobilization and allocation of investment capital are still hampered by the underdeveloped nature of the local financial system. Tunisia's financial markets only finance roughly 8 percent of Tunisia's economy. Tunisia's stock market has begun to attract more investment in the past several years, but the number of companies listed remains low at just 50. In 2007, the stock market's benchmark index, Tunindex, gained 20 percent after gaining 44 percent in 2006. Capital controls are still in place. Foreign investors are permitted to purchase shares in resident firms (through authorized brokers) or to purchase indirect investments through established mutual funds.

¶40. The banking system is considered generally sound and is improving as the Central Bank has begun to enforce adherence to international norms for reserves and debt. Recent measures include actions to strengthen the reliability of financial statements, enhance bank credit risk management, and improve creditors' rights. Revisions to banking laws tightened the rules on investments and bank licensing, and increased the minimum capital requirement. The required minimum risk-weighted capital/asset ratio has been raised to 8 percent, consistent with the Basel Committee capital adequacy recommendations. Despite the strict new requirements, many banks still have substantial amounts of non-performing or delinquent debt in their portfolios. The Government has established debt recovery entities (societes de recouvrement de creances) to buy the non- or under-performing debt of commercial banks. There is no public information available on the success of this measure.

¶41. In recent years, the government has undertaken a number of banking privatizations and consolidations. Even after recent privatizations, the government is the controlling shareholder in 10 of the 20 banks. The estimated total assets of the country's five largest banks are about US \$10 billion. Foreign participation in their capital has risen significantly and is now well over 20 percent.

¶42. Credit is available locally to foreign investors, but some industry observers assert that there exists a well-established collusion among the principal banks to set common interest rates.

¶43. In the last five years regulatory and accounting systems have been brought more in line with required international standards. Most of the major global accounting firms are represented in Tunisia. Tunisian firms quoted on the stock exchange are required to publish semiannual corporate reports audited by a certified public accountant.

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Political Violence  
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¶44. Tunisia is a stable country and incidents involving politically-motivated damage to economic projects or infrastructure are extremely rare. In April 2002, al-Qaeda took responsibility for an attack at the synagogue on the island of Djerba that claimed 20 victims, 14 of them German tourists. This resulted in a significant reduction in the number of European visitors in the immediate aftermath of the attack, but the sector has now recovered.

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In December 2006 and January 2007, Tunisian security forces disrupted a terrorist group, killing or capturing many individuals who reportedly planned to carry out acts of violence in Tunisia. The US Embassy in Tunis was reportedly among the group's intended targets.

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Corruption  
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¶45. Tunisia's penal code devotes 11 articles to defining and classifying corruption and to assigning corresponding penalties (including fines and imprisonment). Several other legal texts also address broader concepts of corruption including violations of the commercial or labor codes, which range from speculative financial practices to giving or accepting bribes. Detailed information on the application of these laws or their effectiveness in combating corruption is not publicly available. There are no statistics specific to corruption. The Tunisian Ministry of Commerce publishes information on cases involving the infringement of the commercial code, but these incidents range from non-conforming labeling procedures to price/supply speculation. The print media report abuses of fiduciary authority by public officials only on rare occasions. Anecdotal reports from the Tunisian business community and US businesses with regional experience suggest that corruption exists, but is not as pervasive as that found in neighboring countries. After several years of steady improvement, Tunisia's ranking on Transparency International's (TI) Corruption Index has dropped from 43 in 2005 to 61 (out of 179 countries) in 2007 with a score of 4.2. According to the TI Corruption Index scale, a score of ten indicates extremely little corruption and a score of zero very serious corruption.

¶46. Most US firms involved in the Tunisian market have not identified corruption as a primary obstacle to foreign direct investment. Some potential investors have asserted that unfair practices and corruption among prospective local partners have delayed or blocked specific investment proposals, or there has been an appearance that cronyism or influence peddling has affected some investment decisions.

¶47. The government's recent efforts to combat corruption have concentrated upon ensuring that price controls are respected, enhancing commercial competition in the domestic market, and harmonizing Tunisian laws with those of the European Union. The public sector is governed by a comprehensive 1989 law designed to regulate each phase of public procurement and established the Higher Market Commission (CSM -Commission Supérieure des Marchés) to supervise the tender and award of major government contracts. The government publicly supports a policy of transparency and has called for it in the conduct of privatization operations. Public tenders

require bidders to provide a sworn statement that they have not and will not, either themselves or through a third party, make any promises or give gifts with a view to influencing the outcome of the tender and realization of the project. Pursuant to the US Foreign Corrupt Practices Act (FCPA), the US government requires that American companies requesting US government advocacy support with foreign governments sign an undertaking not to participate in corrupt practices.

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Bilateral Investment Agreements  
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¶48. A Trade and Investment Framework Agreement (TIFA) between Tunisia and the United States was signed in 2002 and two TIFA Council meetings have taken place. A Bilateral Investment Treaty between Tunisia and the United States took effect in 1991. A 1985 treaty (and 1989 protocol) guarantees US firms freedom from double taxation.

¶49. Tunisia has concluded bilateral trade agreements with

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approximately 60 countries. In January 2008, Tunisia's Association Agreement with the EU went into effect eliminating tariffs on industrial goods with the eventual goal of creating a free trade zone between Tunisia and the EU member states. In addition, Tunisia is signatory of the multilateral agreements with the Multilateral Investment Guarantee Agency (MIGA). Tunisia has signed the Agreement on WTO, bilateral agreements with the Member States of the European Free Trade Association (EFTA), bilateral and multilateral agreements with Arab League members, and a bilateral agreement with Turkey.

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OPIC and Other Investment Insurance Programs  
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¶50. OPIC is active in the Tunisian market and provides political risk insurance and other services to a variety of US companies. OPIC supports private US investment in Tunisia and has sponsored several reciprocal investment missions. The 1963 OPIC agreement with Tunisia was revised and signed in February 2004.

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Labor  
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¶51. Tunisian labor is readily available. Tunisia has a labor force of approximately 3.5 million and a national literacy rate of about 75 percent. About 90 percent of the work force under 35 is literate. The official unemployment rate is under 14 percent (although this is considerably higher in some regions). The figure does not include many who are underemployed.

¶52. Nearly 80,000 new jobs must be created each year to keep unemployment at current levels, while sustained annual GDP growth of about 7 percent would be required in order to make significant inroads into the chronic unemployment figure. The structure of the workforce has remained stable over the past 20 years (19 percent agriculture, 32 percent industry, and 49 percent commerce and services).

¶53. The right to form a labor union is protected by law. There is only one national labor confederation, the General Union of Tunisian Workers (UGTT - Union General des Travailleurs Tunisiens). The UGTT claims about one third of the labor force as members, although more are covered by UGTT-negotiated contracts. Wages and working conditions are established through triennial collective bargaining agreements between the UGTT, the national employers' association (UTICA - Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat), and the Government of Tunisia. These agreements set industry standards and generally apply to about 80 percent of the private sector labor force, whether or not individual companies are unionized. The most recent wage agreements were completed in 2006 and are valid through 2008. The official minimum monthly wage in

the industrial sector is 208 TND (about US \$173) for a 40 hour week and 240 TND (about US \$200) for a 48 hour week.

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Foreign Trade Zones/Free Trade Zones  
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¶54. Tunisia has two free trade zones, one in the north at Bizerte, and the other in the south at Zarzis. The land is state-owned, but the respective zones are managed by a private company. Companies established in the free trade zones, officially known as "Parcs d'Activites Economiques," are exempt from most taxes and customs duties and benefit from special tax rates. Goods are allowed limited duty-free entry into Tunisia for transformation and re-export. Factories are considered bonded warehouses and have their own assigned customs personnel.

¶55. However, companies do not necessarily have to be located in one of the two designated free trade zones to operate with this type of

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business structure. In fact, the majority of offshore enterprises are situated in various parts of the country. Regulations are strict, and operators must comply with the 1993 Investment Code.

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Foreign Direct Investment Statistics  
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¶56. Total FDI in Tunisia is estimated at about US \$19 billion. It has contributed to the creation of over 2,765 companies and approximately 268,000 jobs. Foreign investment in manufacturing industries producing for export has long been the major generator of jobs in Tunisia and has a large share of FDI. In recent years, however, FDI in real estate, infrastructure, and the energy sector has been significant and growing. In 2006, FDI totaled about US \$1.1 billion or US \$3.5 billion including the receipts from the partial privatization of state-owned Tunisie Telecom.

¶57. Tunisia's largest single foreign investor is British Gas, which has developed the Miskar offshore gas field (US \$650 million) and is investing a further US \$500 million for new development. Major foreign presence in other key sectors include telecommunications and electronics (Lucent, Alcatel, Ericsson, Siemens, Sony, Philips, Thomson, Huawei, ZTE), the automotive industry (Lear Corporation, Isuzu, Pirelli, Fiat, Idec), and food products (Nestle, Danone, Chambourcy).

¶58. Major US company presence in Tunisia includes: Citibank, Coca-Cola, Crown Can, Eurocast (a joint venture with Palmer), ExxonMobil, Ford, General Motors, Hewlett Packard, Johnson Controls, Lear Corporation, Merck, Microsoft, Pfizer, Sara Lee (represented in Tunisia under the name of Essel Tunisie/DBA), Stream, and Sylvania. EVOL, originally part of an Italian-owned group producing safety footwear for the export market, was recently purchased by US investors and, with a staff of 4,000, is now the largest US employer in Tunisia. In 2007, Pioneer Natural Resources expanded oil and gas drilling operations in Tunisia, bringing its total investments in Tunisia to roughly US \$165 million.

GODEC